

SENATE No. 1314

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

An Act relative to multichannel video programing fees..

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Section 16 of chapter 62C of the General Laws, as appearing in the 2004
2 Official Edition, is hereby amended by inserting after subsection (k) the following subsection:—

3 (1) Every distributor subject to taxation under section two of chapter sixty-four L shall on
4 or before the twentieth day of each calendar month, file a return with the commissioner stating
5 the gross revenues derived by the distributor during such month from the provision of
6 multichannel video programming distribution services and such other information as the
7 commissioner may deem necessary.

8 SECTION 2. Section 25 of chapter 62C of the General Laws, as so appearing, is hereby
9 amended by striking out the first sentence and inserting in place thereof the following sentence:—
10 Every distributor, unclassified importer, unclassified exporter or purchaser referred to in section
11 one of chapter sixty-four A, every stamper appointed under section thirty of chapter sixty-four C,
12 every user-seller or supplier of special fuels, as defined in section one of chapter sixty-four E,
13 every motor carrier required to be licensed under chapter sixty-four F, every operator required to
14 register under chapter sixty-four G, every vendor required to register under chapter sixty-four H

or sixty-four I, every user-seller or supplier of aircraft fuel, as defined in section one of chapter sixty-four J, every licensee referred to in section twenty-one of chapter one hundred and thirty-eight and every distributor as defined in section one of chapter sixty-four L shall keep and preserve suitable records of taxable charges and such other books, papers, records, and data as the commissioner may require to determine the amount of the tax due under the provisions of those respective chapters.

SECTION 3. Section 37 of chapter 62C of the General Laws, as so appearing, is hereby amended by striking out the fifth paragraph and inserting in place thereof the following paragraph:—

If such person is an operator as defined in section one of chapter sixty-four G, a vendor as defined in section one of chapter sixty-four H or section one of chapter sixty-four I, or a distributor as defined in section 1 of chapter sixty-four L who has collected such tax, no actual refund of money shall be made to such person until he establishes to the satisfaction of the commissioner, under such regulations as he may prescribe, that he has repaid to the purchaser the amount for which the application for refund is made.

SECTION 4. Section 66 of chapter 62C of the General Laws, as so appearing, is hereby amended by striking out the first paragraph and inserting in place thereof the following paragraph:—

The commissioner may require any person required to be licensed or registered by any provision of chapters sixty-four A to sixty-four C, inclusive, chapters sixty-four E to sixty-four J, inclusive, chapter sixty-four L, or subject to taxation under section twenty-one of chapter one hundred and thirty-eight, to file with him a bond, satisfactory to the commissioner, in such

amount as the commissioner may determine, with a surety company authorized to transact business in the commonwealth as surety, to secure the payment of any tax, including any interest or penalty thereon, due or which may become due from such person under said chapters; provided, however, that the amount of such bond required from a vendor under chapter sixty-four H or sixty-four I shall not exceed the amount which the commissioner shall determine to be such vendor's average tax liability for a six month period.

SECTION 5. Section 67 of chapter 62C of the General Laws, as so appearing, is hereby amended by striking out the first paragraph and inserting in place thereof the following paragraph:—

Each vendor, as defined in chapter sixty-four H or sixty-four I, and each operator as defined in chapter sixty-four G who desires to obtain a certificate of registration as required by those chapters, and each person who desires to obtain a license as a distributor, unclassified importer, or unclassified exporter, as defined in chapter sixty-four A, as a manufacturer, wholesaler, vending machine operator, unclassified acquirer, transportation company, or retailer, as defined in chapter sixty-four C, as a user-seller, supplier, or user of special fuels, as defined in chapter sixty-four E, or as a motor carrier, as defined in chapter sixty-four F, as a user-seller or supplier of aircraft fuel as defined in chapter sixty-four J or as a distributor as defined in chapter sixty-four L shall file with the commissioner an application in such form as the commissioner prescribes, giving such information as the commissioner requires; provided, however, that in the instance of an application for a wholesaler's license, as defined in chapter sixty-four C, the commissioner shall require, in addition to such other information as may be deemed necessary, the filing of affidavits from three licensed manufacturers, as defined in said chapter sixty-four C, stating that the manufacturer will supply the wholesaler if the applicant is granted a license.

SECTION 6. The General Laws are hereby amended by inserting after chapter 64K the following chapter:—

CHAPTER 64L

TAXATION OF DISTRIBUTION OF MULTICHANNEL VIDEO PROGRAMMING

Section 1. As used in this chapter, the following words shall, unless the context otherwise requires, have the following meanings:—

“Buying group” or “agent”, an entity representing the interests of more than one distributor that:

(1) agrees to be financially liable for any fees due pursuant to a satellite cable programming, or satellite broadcast programming, contract which it signs as a contracting party as a representative of its members or whose members, as contracting parties, agree to joint and several liability;

(2) agrees to uniform billing and standardized contract provisions for individual members; and

(3) agrees either collectively or individually on reasonable technical quality standards for the individual members of the group.

“Commissioner”, the commissioner of revenue.

“Distributor”, an entity engaged in the business of making available for purchase, by subscribers or customers, multiple channels of video programming. Such entities include, but are not limited to, a cable operator, a multichannel multipoint distribution service, a direct broadcast

satellite service, a television receive-only satellite program distributor, and a satellite master antenna television system operator, as well as buying groups or agents of all such entities.

“Franchise fee”, a franchise fee as defined by 47 U.S.C. section 542(g), as amended and in effect for the taxable year.

“Gross revenues”, gross revenues derived by a distributor that are taken into account for purposes of computing the limitation under 47 U.S.C. section 542(b), as amended and in effect for the taxable year. If a distributor is not subject to the limitation under 47 U.S.C. section 542(b), “gross revenues” shall mean all gross receipts derived by the distributor from the operation of its facilities for the provision of multichannel video programming distribution services .

“Multichannel video programming distribution services”, the provision by a distributor to its subscribers or customers of multiple channels of video programming or other programming service.

“Subscriber or customer”, a member of the general public who receives video programming from a distributor and does not further distribute such video programming.

“Video programming”, programming provided by, or generally considered comparable to programming provided by, a television broadcast station.

Section 2. An excise is hereby imposed upon the provision of multichannel video programming distribution services to a subscriber or customer in this commonwealth by any distributor in an amount equal to five percent of the distributor’s gross revenues derived from or attributable to such subscriber or customer. A credit shall be allowed against such excise for any

license fee paid by the distributor with respect to such subscriber or customer pursuant to section 9 of chapter 166A and for the amount of any other franchise fees (other than the excise imposed by this section) paid by the distributor with respect to such subscriber or customer that are taken into account for purposes of computing the limitation under 47 U.S.C. section 542(b).

The distributor shall pay the excise to the commissioner at the time provided for filing the return required by section sixteen of chapter sixty-two C.

Section 3. Reimbursement for the excise hereby imposed shall be paid by the subscriber or customer to the distributor, and each distributor in this commonwealth shall add to the amount charged to such subscriber or customer and shall collect from such subscriber or customer the full amount of the excise imposed by this chapter with respect to gross revenues derived from or attributable to such customer or subscriber, or an amount equal as nearly as possible or practical to the average equivalent thereof; and such excise shall be a debt from the subscriber or customer to the distributor, when so added to the amount charged to such subscriber or customer, and shall be recoverable at law in the same manner as other debts.

Section 4. No person shall do business in this commonwealth as a distributor unless a registration shall have been issued to him in accordance with section sixty-seven of chapter sixty-two C.

Section 5. Every distributor who fails to pay to the commissioner any sums required to be paid by this chapter shall be personally and individually liable therefor to the commonwealth. The term "distributor", as used in this section, includes an officer or employee of a corporation, or a member or employee of partnership, who as such officer, employee or member is under duty to pay over the taxes imposed by this chapter.

Section 6. Any person not a resident of the commonwealth who engages in the business of providing multichannel video programming distribution services to subscribers or customers in this commonwealth shall, as a condition precedent to engaging in such business and by so engaging in such business, be deemed thereby to appoint the secretary of the commonwealth his agent for the service of process in any judicial proceeding under this chapter. Such process shall be served by leaving a copy of the process in the hands of the secretary of the commonwealth or a deputy or in the office of said secretary. Such service shall be sufficient service upon the person; provided, that notice of such service and a copy of the process is, at least fifteen days before the return day of such process, sent by registered mail to such person's last known address, and that the sender's registered mail receipt and the commissioner's affidavit of compliance with this section are appended to the process and filed in the action or proceeding on or before the return day of the process or within such further time as the court may allow. The court in which the action or proceeding is pending may order such continuances as may be necessary to afford the defendant reasonable opportunity to defend the action. Service of process in the foregoing manner shall be of the same force and validity as if served upon the taxpayer personally within the commonwealth.

Section 7. Any distributor who has paid to the commissioner an excise under this chapter upon an account later determined to be worthless shall be entitled to reimbursement without interest of the excise paid to the commissioner on such worthless account. Such claim for reimbursement, covering the amount of excise paid on accounts determined to be worthless in the vendor's prior fiscal year, shall be filed on or before the due date, including extensions, of the federal income tax return for such prior fiscal year. Any vendor who shall recover, in whole or in part, upon an account previously determined to be worthless for which reimbursement had

146 been received, shall report and include the same in his return for the period during which the
147 recovery occurred.

148 SECTION 7. Notwithstanding the provisions of section twenty-two of chapter five
149 hundred and forty-six of the acts of nineteen hundred and sixty-nine, the additional tax imposed
150 by such subsection shall not apply to any tax imposed by section 2 of chapter sixty-four L of the
151 General Laws.

152 SECTION 8. This act shall take effect on July 1, 2007, and shall apply to gross revenues
153 derived by a distributor that are billed to subscribers or customers on or after that date.